

Divorce - A Fact Sheet

What is an application for divorce?

A divorce application is an application made to the Family Court of Western Australia to finalise the end of a marriage that's broken down irretrievably (beyond repair) with no possibility of reconciliation (getting back together).

Do my spouse and I have to apply for a divorce together?

You and your spouse can apply for divorce together (a joint application) or you can apply by yourself (a sole application).

What are the grounds for divorce?

There's only one ground for divorce: that your marriage has broken down irretrievably and you're unlikely to reconcile.

Do I have to prove fault when I apply for divorce?

No, there's no need to prove fault. In Australia divorce is on a "no-fault" basis.

How do I prove that my marriage has broken down, and there's no chance of us reconciling?

The only proof the Family Court needs is that you and your spouse have separated, you've lived separately and apart for a continuous period of 12 months immediately before the date of filing the application, and there's no chance you'll reconcile.

If my partner and I reconcile and separate again, can my first period of separation be taken into account?

Yes, it can be taken into account in certain circumstances. You should get legal advice if this applies to you.

My spouse and I are separated but we've been living under the same roof. Can we still get a divorce after 12 months of separation?

Yes, you can, but you need to prove that you've separated.

To do this you need an affidavit from an independent third party, and also an affidavit from you and another from your spouse (if you're making a joint application) or an affidavit from you and a third person (if you're making a sole application). An affidavit is a written and sworn statement of something that can be used as evidence in court.

You also need to provide certain evidence of your separation to the Court. This could include that both of you:

- Sleep in separate bedrooms;
- Have ceased intimacy and sexual activity;
- Have separate bank accounts and finances;
- Don't do things around the house for each other;
- Act in such a way that people in your everyday life such as friends, family members, neighbours, and employers can tell that you've separated, and your marriage has ended;
- Don't attend social activities together; or
- Don't socialise or entertain together in your home, for example, watch TV together or host friends for dinner.

What is a 'short marriage'?

In Australian divorce law, a marriage of fewer than two years is called a "short marriage". The two year period is calculated from the date of your marriage to the date of your application for divorce.

If you had a short marriage, then before you can apply for divorce you're required to attend counselling with your former spouse to discuss if there's any possibility of reconciling. Your counsellor must be a professional who's able to issue an Attendance at Counselling Certificate.

The Court needs this certificate before it will grant you a divorce.

Need Advice? Call Citizens Advice Bureau on **(08) 9221 5711**, or visit **www.cabwa.com.au**



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What if I have a short marriage and can't attend counselling?

If you can't attend counselling, you have to file an affidavit seeking the Court's permission to apply for a divorce. In your affidavit you need to explain:

- Why you and your spouse haven't attended counselling. If your spouse has refused to attend, you should explain your attempts to invite them to attend. If you can't find your spouse, you should explain the ways you've tried to locate them;
- Any special circumstances of your case, for example, if there's a history of violence or abuse in your marriage and it's not safe for you to attend counselling with your spouse.

If I'm making a joint application with my spouse, what do we have to do?

Both of you have to complete Form 3. Refer to our fact sheet on eLodgment of court documents.

You and your spouse have to appear before a Justice of the Peace and swear that all of the information you've provided is true.

You can do this together or separately. You then need to scan and upload the documents following the prompts.

If I'm making a sole application, what do I have to do?

- You have to complete Form 3, providing all of your personal details and as many of your spouse's details as possible. Refer to our fact sheet on eLodgment of court documents.
- You have to appear before a Justice of the Peace and swear that all of the information you've provided is true.
- You then need to scan and upload the documents following the prompts. Then you need to download the stamped Form 3 to be served on your spouse.

- You should find another adult such as a family member or a friend to serve the documents on your spouse. You can also use a process server to do this. Once the other party has been served, the server has to complete the Form 7, specifying the date, time, and place where your spouse was served, and sign to it before a Justice of the Peace.
- The server returns Form 7 to you. The server may also return the Form 6, signed by your spouse to say that they have received Form 3.
- You must swear an affidavit to say that the signature on Form 6 is that of your spouses.
- You then have to scan and upload the Forms 6 and 7 and your Affidavit of Proof of Signature.

Can I serve the documents to my spouse by mail?

Yes, you can, but it's not advisable if you think that your spouse might not complete and return the Form 6.

Which form do I need to complete to apply for a divorce?

You need to complete Family Court's Form 3— Application for Divorce.

Do I have to attend court?

You only have to attend court if:

- You have made a sole application and there are children of the marriage aged under 18; or
- You have lived under the same roof during the required 12 months period before divorce. after separation.

Why do I have to attend court if there are children and I have made a sole application?

The Court needs to be satisfied that your children are spending time with the parent they're not living with.

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When will my divorce become final?

If there aren't any issues with serving the documents on your spouse, then your divorce will be finalised one month and one day after the court date specified on your Form 3. The Court will issue a Certificate of Divorce Absolute to you. It's only once you have this certificate that you are free to re-marry.

Can I object to a divorce order being made, and if so, what forms do I have to fill out?

Yes, you can. The only objection is if parties have not been separated for one year and one day before filing the application. You need to complete Form 3A.

What if some of the information in the Form 3 is incorrect?

You can file Form 2 and an affidavit. The other option is to attend court on the date listed and make a verbal submission to the court rectifying the errors.

Where can I get all the forms mentioned?

You can find them at the Family [Court of WA's website](#) and each form is linked below:

- [Form 3;](#)
- [Form 3A;](#)
- [Form 2; and](#)
- [Affidavit.](#)

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